IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4301 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

ASHOKBHAI KISHANRAO MARATHA

Appearance:

MR HS MUNSHAW for Appellant

MS PARUL R PATEL for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Ms Parul R. Patel appears for the respondent-original claimant and waives service of notice in the appeal.

2. On a joint request of learned counsel for the respective parties, this appeal is taken up for hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Ahmedabad Municipal Transport Service, being the owner of the bus involved in the accident, challenging the judgement and award passed by the Motor Accident Claims Tribunal at Ahmedabad, in Motor Accident Claim Petition No.158/1993.

4. Learned counsel for the appellant first challenged the award on the ground that the claimant has failed to prove the negligence of the driver of the bus which is alleged to have caused the accident. This contention has to be examined on the other facts of the case established by appropriate evidence on record. There is no controversy that the deceased Ramesh Kishanrao Maratha was crossing the road near Prem Darwaja traffic circle on 23rd December 1992 at about 8.30 pm, when the bus owned by the appellant, coming from Kalupur side hit the deceased Ramesh Kishanrao Maratha (with the front portion of the bus). As a result of this impact deceased Ramesh fell on the road, sustained serious head injuries, and although he was removed immediately to the civil hospital, he was declared dead on arrival at the hospital. From these facts it would transpire that the accident occurred near a traffic circle near Prem Darwaja which is at any point of the day a congested area, with considerable vehicular and also pedestrian traffic, and that under such circumstances drivers of heavy vehicles such as the bus are expected to take even greater care than under normal circumstances.

5. On the facts of the case, it is noted that the driver has not been examined by the appellant owner. The conductor of the bus has been examined, whose evidence has rightly been rejected by the Tribunal as not being useful, inasmuch as the conductor was engaged in his own business of issuing tickets, and at the relevant point of time he had not had the focus of his attention on pedestrian traffic. In the premises aforesaid, it could not be urged that the driver was not responsible for the accident.

6. It was then sought to be urged by the learned counsel for the appellant that the claimant who had filed the claim petition under section 166 of the Act was the brother of the deceased, and that he therefore had no locus standi to prefer the claim. This contention is only required to be mentioned in order to be rejected. It is on record that the deceased Ramesh Kishanrao Maratha was a bachelor. Under the circumstances the applicant in the claim petition, who is a real brother of the deceased, cannot possibly be said to be a person who is not an heir of the deceased Ramesh Kishanrao Maratha.

7. It was then sought to be urged that the multiplier of 16 applied by the Tribunal is excessive. On the facts of the case it is found that the deceased Ramesh Kishanrao Maratha was aged 30 years at the time of the accident. This age has been established from the postmortem notes which are on record. It may at best be urged that this is not an accurate estimate of the age, in the absence of other independent and more reliable evidence. However, this by itself does not justify the rejection of the postmortem notes as a relevant piece of evidence, particularly since the appellant as the owner of the vehicle in question has chosen not to prefer any evidence to the contrary. On the facts of the case, we are of the opinion that the multiplier of 16 applied by the Tribunal, where the age of the deceased is found to be 30 years, is not in any manner excessive so as to justify interference by way of the present appeal.

8. It was then sought to be contended on behalf of the appellant that the Tribunal has erred in awarding interest at the rate of 12% per annum from the date of the claim petition till realisation, and that this rate of interest is excessive.

9. On this limited aspect of the appropriate rate of interest, as a result of the hearing and discussion, learned counsel for the respective parties have arrived at a consensus on the basis of which we find and hold that the appropriate rate of interest applicable to the amount of compensation determined by the Tribunal would be at the rate of 12% per annum, from the date of the petition viz. 25th October 1993, upto 25th October 1997, and at the rate of 9% thereafter upto the date of realisation.

10. In the premises aforesaid, the impugned award is modified only to the extent indicated hereinabove as regards the rate of interest applicable on the amount of

compensation awarded by the Tribunal. The rest of the award is sustained.

11. This appeal is, therefore, partly allowed to the aforesaid extent with no order as to costs. Decree accordingly.

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